

June 16, 2005

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Irene M. Flannery
Vice President, High Cost & Low Income Division
Universal Service Administrative Company
2000 L. Street, N.W., Suite 200
Washington, D.C. 20036

Re: State certification of continuing verification procedures to
validate
consumers' continued eligibility for State telecommunications
assistance programs

Dear Ms. Dortch and Ms. Flannery:

Consistent with the Federal Communications Commission's (FCC's) decision in In the Matter of Lifeline and Link-Up, Report & Order & Further Notice of Proposed Rulemaking, WC Docket No. 03-109, FCC 04-87 (adopted April 2, 2004, released April 29, 2004); and consistent with 47 C.F.R. § 54.410 (c), the Public Service Commission of West Virginia hereby certifies to the FCC that West Virginia is in compliance with the new requirements for verification of consumers continuing eligibility for state low-income telecommunications assistance programs. West Virginia's low-income telecommunications assistance program does not have an eligibility criterion based solely on income, so no certification is required pursuant to 47 C.F.R. § 54.410(a).

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Attached to this letter is a copy of the Commission's recent Order which, among other things, summarizes West Virginia's continuing verification procedures of Tel-assistance customers and requires eligible telecommunications providers to file revised tariffs reflecting the State's procedures.

Sincerely,

E. H. Staats
Chairman

EHS/ljm

Enclosure

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PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

At a session of the Public Service Commission of West Virginia, in the City of Charleston, on the 15th day of June, 2005.

CASE NO. 05-0888-T-T

In the matter of TARIFF AMENDMENTS BY ELIGIBLE
TELECOMMUNICATIONS CARRIERS TO COMPLY WITH FCC
LIFELINE/LINK-UP ORDER

COMMISSION ORDER

This case is instituted to receive tariff revisions from eligible telecommunications carriers, to comply with a Federal Communications Commission (FCC) order regarding verification of continued eligibility for reduced rates and charges for basic residential telephone service.

Background

It is a national¹ and state² goal that every household be connected to the

¹The federal Telecommunications Act of 1996 provides, in pertinent part, as follows:

(b) UNIVERSAL SERVICE PRINCIPLES- The Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles:

(1) QUALITY AND RATES- Quality services should be available at just, reasonable, and affordable rates.

(2) ACCESS TO ADVANCED SERVICES- Access to advanced

telecommunications and information services should be provided in all regions of the Nation.

(3) ACCESS IN RURAL AND HIGH COST AREAS- Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

(4) EQUITABLE AND NONDISCRIMINATORY CONTRIBUTIONS- All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.

(5) SPECIFIC AND PREDICTABLE SUPPORT MECHANISMS- There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.

(6) ACCESS TO ADVANCED TELECOMMUNICATIONS SERVICES FOR SCHOOLS, HEALTH CARE, AND LIBRARIES- Elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services as described in subsection (h).

(7) ADDITIONAL PRINCIPLES- Such other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this Act.

(c) DEFINITION-

(1) IN GENERAL- Universal service is an evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services. The Joint Board in recommending, and the Commission in establishing, the definition of the services that are supported by Federal

telecommunications network. To this end, the FCC provides the Lifeline and Link-Up programs. Lifeline provides eligible customers with basic telephone service at a reduced monthly charge, and service connection charges are reduced through Link-up. Telecommunications carriers are reimbursed for these discounts from the federal Universal Service Fund.

West Virginia also provides assistance to low-income residential

universal service support mechanisms shall consider the extent to which such telecommunications services—

(A) are essential to education, public health, or public safety;

(B) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;

(C) are being deployed in public telecommunications networks by telecommunications carriers; and

(D) are consistent with the public interest, convenience, and necessity.

47 U.S.C.A. § 254

² *W. Va. Code* § 24-2C-1 provides, in pertinent part, as follows:

(a) The Legislature finds that universal telephone service contributes to the state's economic, social and political integration and development. The preservation of universal telephone service is therefore of utmost importance to the state and its citizens.

* * *

(c) All eligible telecommunications carriers providing local exchange dial access line service subject to the jurisdiction of the public service commission shall file with the commission tariffs providing for the offering of a new class of basic residential service, at a special reduced rate, to certain low-income households. . .

customers, via the Tel-assistance program, under which residential customers receive a discount on the monthly rate for basic telephone service. *See, W. Va. Code* § 24-2C-1 *et seq.* Under the Tel-assistance program, the Public Service Commission (PSC or Commission) certifies the revenue deficiency that telephone companies experience as a result of providing the discounted service, and the telephone companies are allowed a corresponding credit against their state taxes. *W. Va. Code* § 24-21C-5.

In 2003, the West Virginia Legislature amended the Tel-assistance statutes to conform with federal Lifeline eligibility standards. Thereafter, both the PSC and the West Virginia Department of Health and Human Resources (DHHR) amended their Tel-assistance rules to be consistent with the revised statutes. Under the revised rules, recipients of Medicaid, food stamps, supplemental security income, federal public housing assistance, low-income home energy assistance program benefits, temporary assistance to needy family benefits or other income-related state or federal programs may participate in West Virginia's Tel-assistance program. *W. Va. Code* § 24-2C-2(b) and 150 C.S.R. § 6-10.2.c. In determining eligibility for Tel-assistance, eligible telecommunications carriers are entitled to rely on information provided by DHHR under 78 C.S.R. § 15-4. West Virginia does not yet have a purely income-based test for its Tel-assistance program, such as the FCC recently established.

In 2004, the FCC expanded the eligibility criteria for the federal programs,³ primarily by establishing an income-based test of 135% of the federal poverty level. The FCC also encouraged, but did not require, states to similarly expand the eligibility criteria for telecommunications assistance programs administered by the states. States that adopt income-based criteria are required to certify to the FCC by June 22, 2005, that they have procedures in place to verify the income of applicants for telecommunications assistance programs. Even if states do not adopt an income-based eligibility standard, they must certify by June 22, 2005, that there are procedures in place to verify that participants continue to be eligible for state telecommunications assistance programs.⁴

³ In the Matter of Lifeline and Link-Up, Report & Order & Further Notice of Proposed Rulemaking, WC Docket No. 03-109, FCC 04-87 (adopted April 2, 2004, released April 29, 2004).

⁴ 47 C.R.F. part 54.410 provides, in pertinent part, as follows:

DISCUSSION

Under the Tel-assistance statute and existing rules, West Virginia does not provide for eligibility based purely on an applicant's income. Eligibility for Tel-assistance continues to be determined by participation in various assistance programs administered by the DHHR. As a result, there is no need to certify

* * *

(c) *Verification of Continued Eligibility.* Consumers qualifying for Lifeline may be required to verify continued eligibility on an annual basis.

(i) By one year from the effective date of these rules, eligible telecommunications carriers in states that mandate state Lifeline support must comply with state verification procedures to validate consumers' continued eligibility for Lifeline.

that West Virginia procedures are in place to verify the incomes of Tel-assistance applicants. However, the PSC may consider further expanding the eligibility criteria in a separate proceeding at a later date.

Under the Tel-assistance statute and existing rules, an applicant's initial eligibility for Tel-assistance is verified by DHHR.⁵ Although the Commission's Tel-assistance rules are silent on the issue of verification of continuing eligibility, *W. Va. Code* §24-2C-4(d) and 78 C.S.R. §15-4.1.a., require the DHHR "to determine on a continuing basis the eligibility of persons receiving tel-assistance service" In addition, DHHR notifies eligible telecommunications carriers when a Tel-assistance customer ceases to participate in qualifying programs. As a result, it appears that West Virginia does in fact have a procedure in place to verify the continuing eligibility of Tel-assistance customers as required by federal regulations. Accordingly, the Commission intends to file with the FCC on June 22, 2005, a certification that West Virginia is in compliance with new requirements for verification of continuing eligibility of customers for telecommunications assistance programs.

Nevertheless, the Commission believes it is appropriate to remind all eligible telecommunications carriers in West Virginia that it is their responsibility to verify with DHHR the initial and continuing eligibility of Tel-assistance recipients.⁶ The Commission also believes that all eligible telecommunications carriers in West Virginia should include language in their Tel-assistance tariffs concerning the fact that eligibility for the Tel-assistance program is subject to initial and continuing verification. The required language shall state as follows: "Eligibility for Tel-assistance service shall be subject to initial and continuing verification by the Department of Health and Human Resources." If the tariffs of eligible telecommunications carriers do not already

⁵ *W. Va. Code* § 24-2C-4(d) and 150 C.S.R. § 6-10.4.b.

⁶Pursuant to 150 C.S.R. § 6-10.4.c. a customer can receive Tel-assistance service based on self-certification of eligibility, so long as the eligibility of the customer is subject to subsequent verification.

contain the same or similar language, the Commission shall require eligible telecommunications carriers to file revised tariffs concerning verification of eligibility no later than June 22, 2005. All revised tariffs shall be filed for Commission review under this case number.

The Commission would also note that under 150 C.S.R. § 6-10.5.a., all eligible telecommunications carriers, even those that do not file for a certification of a revenue deficiency for providing Tel-assistance service, must report to the Commission by March 1 of each year on the extent of their provision of Tel-assistance service. To date, the Commission has received such reports only from eligible telecommunications carriers seeking certification of revenue deficiencies.⁷ All eligible telecommunications carriers are hereby put on notice that they must file with the Commission by March 1 of each year a report of their provision of Tel-assistance service during the previous calendar year. As part of such report, the eligible telecommunications carriers shall list the number of Tel-assistance customers at the beginning of the year and at the end of the year, and the total amount of federal and state discounts provided to Tel-assistance recipients. The eligible telecommunications carriers shall also certify that they are in compliance with the requirement to verify the initial and continuing eligibility of recipients of Tel-assistance service.

FINDINGS OF FACT

1. It is a national and state goal that every household be connected to the telecommunications network. To this end, the FCC provides the Lifeline and Link-Up programs. Lifeline provides eligible customers with basic telephone service at a reduced monthly charge, and service connection charges are reduced through Link-up. Telecommunications carriers are reimbursed for these discounts from the federal Universal Service Fund.

2. West Virginia also provides assistance to low-income residential customers, via the Tel-assistance program, under which residential customers receive a discount on the monthly rate for basic telephone service. *See, W. Va. Code § 24-2C-1 et seq.* Under the Tel-assistance program, the Public Service Commission (PSC) certifies the revenue deficiency that telephone companies

⁷Verizon West Virginia, Inc. and Citizens Telecommunications Company of West Virginia, dba Frontier Communications of West Virginia.

experience as a result of providing the discounted service, and the telephone companies are allowed a corresponding credit against their state taxes. *W. Va. Code* § 24-21C-5.

3. In 2003, the West Virginia Legislature amended the Tel-assistance statutes to conform with federal Lifeline eligibility standards. Thereafter, both the PSC and the West Virginia Department of Health and Human Resources (DHHR) amended their Tel-assistance rules to be consistent with the revised statutes. Under the revised rules, recipients of Medicaid, food stamps, supplemental security income, federal public housing assistance, low-income home energy assistance program benefits, temporary assistance to needy family benefits or other income-related state or federal programs may participate in West Virginia's Tel-assistance program. *W. Va. Code* § 24-2C-2(b) and 150 C.S.R. § 6-10.2.c.

4. In determining eligibility for Tel-assistance, eligible telecommunications carriers are entitled to rely on information provided by DHHR under 78 C.S.R. § 15-4.

5. West Virginia does not yet have a purely income-based test for its Tel-assistance program, such as the FCC recently established.

6. In 2004, the FCC expanded the eligibility criteria for the federal programs, primarily by establishing an income-based test of 135% of the federal poverty level. The FCC also encouraged, but did not require, states to similarly expand the eligibility criteria for telecommunications assistance programs administered by the states.

7. States that adopt income-based criteria are required to certify to the FCC by June 22, 2005, that they have procedures in place to verify the income of applicants for telecommunications assistance programs. Even if states do not adopt an income-based eligibility standard, they must certify by June 22, 2005, that there are procedures in place to verify that participants continue to be eligible for state telecommunications assistance programs.

CONCLUSIONS OF LAW

1. It is appropriate to institute this case to receive tariff revisions from

eligible telecommunications carriers, to comply with a FCC order regarding verification of continued eligibility for reduced rates and charges for basic residential telephone service.

2. Under the Tel-assistance statute and existing rules, West Virginia does not provide for eligibility based purely on an applicant's income. Eligibility for Tel-assistance continues to be determined by participation in various assistance programs administered by the DHHR. As a result, there is no need to certify that West Virginia procedures are in place to verify the incomes of Tel-assistance applicants. However, the PSC may consider further expanding the eligibility criteria in a separate proceeding at a later date.

3. Under the Tel-assistance statute and existing rules, an applicant's initial eligibility for Tel-assistance is verified by DHHR. Although the Commission's Tel-assistance rules are silent on the issue of verification of continuing eligibility, *W. Va. Code* §24-2C-4(d) and 78 C.S.R. §15-4.1.a., require the DHHR "to determine on a continuing basis the eligibility of persons receiving tel-assistance service. . . ." In addition, DHHR notifies eligible telecommunications carriers when a Tel-assistance customer ceases to participate in qualifying programs.

4. As a result, it appears that West Virginia does in fact have a procedure in place to verify the continuing eligibility of Tel-assistance customers as required by federal regulations. Accordingly, the Commission intends to file with the FCC on June 22, 2005, a certification that West Virginia is in compliance with new requirements for verification of continuing eligibility of customers for telecommunications assistance programs.

5. It is appropriate to remind all eligible telecommunications carriers in West Virginia that it is their responsibility to verify with DHHR the initial and continuing eligibility of Tel-assistance recipients.

6. All eligible telecommunications carriers in West Virginia should include language in their Tel-assistance tariffs concerning the fact that eligibility for the Tel-assistance program is subject to initial and continuing verification. The required language shall state as follows: "Eligibility for Tel-assistance service shall be subject to initial and continuing verification by the Department of Health and Human Resources." If the tariffs of eligible

telecommunications carriers do not already contain the same or similar language, the Commission shall require eligible telecommunications carriers to file revised tariffs concerning verification of eligibility no later than June 22, 2005. All revised tariffs shall be filed for Commission review under this case number.

7. Under 150 C.S.R. § 6-10.5.a., all eligible telecommunications carriers, even those that do not file for a certification of a revenue deficiency for providing Tel-assistance service, must report to the Commission by March 1 of each year on the extent of their provision of Tel-assistance service. To date, the Commission has received such reports only from eligible telecommunications carriers seeking certification of revenue deficiencies. All eligible telecommunications carriers are hereby put on notice that they must file with the Commission by March 1 of each year a report of their provision of Tel-assistance service during the previous calendar year.

8. As part of the March 1 report, the eligible telecommunications carriers shall list the number of Tel-assistance customers at the beginning of the year and at the end of the year, and the total amount of federal and state discounts provided to Tel-assistance recipients. The eligible telecommunications carriers shall also certify that they are in compliance with the requirement to verify the initial and continuing eligibility of recipients of Tel-assistance service.

ORDER

IT IS THEREFORE ORDERED this case is hereby instituted to receive tariff revisions from eligible telecommunications carriers, to comply with a FCC order regarding verification of continued eligibility for reduced rates and charges for basic residential telephone service.

IT IS FURTHER ORDERED that all eligible telecommunications carriers in West Virginia shall include language similar or identical to the following in their Tel-assistance tariffs: "Eligibility for Tel-assistance service shall be subject to initial and continuing verification by the Department of Health and Human Resources."

IT IS FURTHER ORDERED that eligible telecommunications carriers that do not already have tariffs on file at the Commission containing the same or similar language to the foregoing, shall, on or before June 22, 2005, file revised

tariffs concerning verification of eligibility. All revised tariffs shall be filed for Commission review under this case number.

IT IS FURTHER ORDERED that all eligible telecommunications carriers are hereby put on notice that they must file with the Commission by March 1 of each year a report of their provision of Tel-assistance service during the previous calendar year.

IT IS FURTHER ORDERED that each March 1 report filed by eligible telecommunications carriers shall list the number of Tel-assistance customers at the beginning of the year and at the end of the year, and the total amount of federal and state discounts provided to Tel-assistance recipients. The eligible telecommunications carriers shall also certify that they are in compliance with the requirement to verify the initial and continuing eligibility of recipients of Tel-assistance service.

IT IS FURTHER ORDERED that the Commission's Executive Secretary serve a copy of this order upon **the Federal Communications Commission, and all eligible telecommunications carriers** by both **e-mail and United States First Class Mail** and upon Commission Staff by hand delivery.

JML/ljm
050888c.wpd